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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,670	12/21/2000	William Lockett JR.	(ENC-103C)	1952

7590 04/07/2004

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT PAPER NUMBER

1764

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/745,670

Applicant(s)

LOCKETT, WILLIAM

Examiner

Virginia Manoharan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Applicant's election without traverse of claims 13-19 is acknowledged.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors, e.g, typographical, grammar, idiomatic, syntax and etc. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claims 13-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(a) The claims or at least part of the claims do not recite positive, explicit, physical, process steps which make the actual steps vague and indefinite. Just as an example, note the recitation in claim 13 of "...by including a remotely located bottoms liquid hold-up pool vessel...."

(b) The claimed "the fractionator baffled" in claim 13, , line 6, lacks antecedent support.

(c) The used of a parenthetical expression in a claim is improper as it is unclear whether to disregard the limitation in parenthesis or not? See claim 13.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-16 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-14 & 17-18 of U.S. Patent No. 6,193,849 in view of Nelson (4,666,562) or Kwasnoski et al (4,140,586).

The instant process is covered in the claims of the above patent and vice versa. The difference seen is that claim 13 recites, for example, "... by including within said fractionation process a remotely located bottoms liquid hold-up pool vessel connected via a bottoms liquid outlet at a separate location from product vapors..."

However, connecting the liquid hold-up pool vessel remotely or externally of the fractionator as claimed, as opposed to internally as is known in the prior art, is deemed not to constitute a patentable distinction. Shifting to a different location i.e., from internally to externally and vice versa is not a patentable advance. Nonetheless, Nelson's vessel (12) and Kwasnoski's vessel (33) appear to meet the above claimed vessel.

Claims 13-16 and 19 are rejected under the judicially created doctrine of double patenting over claims 12-14 and 17-18 of U. S. Patent No. 6,193,849 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common

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subject matter, as follows: interalia, a "...process utilizing a fractionation vessel for separation of components having different boiling points, wherein reactor effluent component vapors are fed into a vapor feed contacting zone, wherein low boiling point components separate and pass upwardly above said vapor feed contacting zone, and wherein high boiling point components separate and gravitate into a heavy bottoms liquid hold-up pool section below said vapor feed contacting zone and are removed therefrom via a bottoms outlet, which process also includes utilizing a bottoms recycle system with a heat exchanger to recycle, cooled bottoms back to said fractionation vessel at said heavy bottoms liquid hold-up pool section wherein, said bottoms liquid hold-up pool vessel includes steam input and wherein steam is recycled therefrom to said bottoms liquid removal area of said fractionation vessel to provide a seal between product vapors and bottoms liquid; and wherein said bottoms liquid removal area of said fractionation vessel includes a quenching liquid outlet contained therein which extends from said bottoms liquid hold-up pool vessel; and further wherein said process is selected from the group consisting of petroleum fractionation, petro-chemical fractionation and chemical fractionation..."

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Disclosure of Admitted Prior Art in view of Nelson (4,666,562) or Kwasnoski et al (4,140, 586).

At the outset, the limitation(s) recited in the Jepson format is an implied admission that it is known in the art, leaving therefore for consideration, the limitation(s) recited in the "improvement" clause. However, providing and external or remote bottoms liquid-hold up pool vessel as claimed, would have been obvious to one of ordinary skill in the art as taught by Nelson or Kwasnoski et al, discussed supra for the advantages taught e.g, by Nelson at col. 5, lines 60-67.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- (a) Kwasnoski et al. '311 discloses a process wherein the bottoms still is passed through a heat exchanger.
- (b) Hamer et al discloses a vacuum distillation process.
- (c) Roth shows a drum external to the fractionator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is (571) 272-1450. The examiner can normally be reached on Tuesday-Friday from 7:00a.m to 6:00p.m.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola, can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9311.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Manoharan/tgd

March 15, 2004


VIRGINIA MANOHARAN
PRIMARY EXAMINER
ART UNIT 128/1764